COPY

No. 03-710

Supreme Court, U.S.
FILED
JUN 17 2004
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

GERALD DEVENPECK AND JOI HANER, *Petitioners,*

v.

JEROME ANTHONY ALFORD, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF CALIFORNIA AND FIFTEEN OTHER STATES AND THE COMMOMWEALTH OF PUERTO RICO AS AMICI CURIAE IN SUPPORT OF PETITIONERS

BILL LOCKYER
Attorney General of the State of California
MANUEL M. MEDEIROS
State Solicitor
ROBERT R. ANDERSON
Chief Assistant Attorney General
MARY JO GRAVES
Senior Assistant Attorney General
JANET E. NEELEY
Supervising Deputy Attorney General
LEE E. SEALE
Deputy Attorney General
PATRICK J. WHALEN
Deputy Attorney General
Counsel of Record
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-2785
Fax: (916) 324-2960
Counsel for Amici States

TROY KING
Attorney General
State of Alabama

M. JANE BRADY
Attorney General
State of Delaware

MARK J. BENNETT
Attorney General
State of Hawaii

LISA MADIGAN
Attorney General
State of Illinois

STEVE CARTER
Attorney General
State of Indiana

CHARLES C. FOTI, JR.
Attorney General
State of Louisiana

J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland

THOMAS F. REILLY
Attorney General
State of Massachusetts

MICHAEL A. COX
Attorney General
State of Michigan

WAYNE STENEHJEM
Attorney General
State of North Dakota

W.A. DREW EDMONDSON
Attorney General
State of Oklahoma

HARDY MYERS
Attorney General
State of Oregon

GERALD J. PAPPERT
Attorney General
State of Pennsylvania

ANABELLE RODRÍGUEZ
Secretary of Justice
Commonwealth of Puerto Rico

HENRY MCMASTER
Attorney General
State of South Carolina

MARK L. SHURTLEFF
Attorney General
State of Utah

QUESTIONS PRESENTED

If an officer has probable cause to arrest a suspect for a violation of state law, does his mistaken belief that the suspect has committed another unrelated offense affect the legality of the arrest under the Fourth Amendment?

TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
ALFORD'S ARREST WAS PROPER BECAUSE THE WASHINGTON PATROL OFFICERS HAD PROBABLE CAUSE TO BELIEVE THAT ALFORD HAD CRIMINALLY IMPERSONATED A POLICE OFFICER	3
CONCLUSION	14

TABLE OF AUTHORITIES

Cases	Page
Alford v. Haner 333 F.3d 972 (9th Cir. 2003)	*Passim*
Arkansas v. Sullivan 532 U.S. 769 (2001)	7
Atwater v. Lago Vista 532 U.S. 318 (2001)	4
Biddle v. Martin 992 F.2d 673 (7th Cir. 1993)	12
Burchett v. Kiefer 310 F.3d 937 (6th Cir. 2002)	11
Fletcher v. Town of Clinton 196 F.3d 41 (1st Cir. 1999)	5
Florida v. Royer 460 U.S. 491 (1983)	10, 11
Gasho v. United States 39 F.3d 1420 (9th Cir. 1994)	8
Hatcher v. State 410 N.E.2d 1187 (Ind. 1980)	12
Hicks v. Board of Supervisors 69 Cal.App.3d 228 (Cal. Ct. App. 1977)	4

TABLE OF AUTHORITIES (continued)

	Page
Jones v. City of Jackson 203 F.3d 875 (5th Cir. 2000)	11
Kladis v. Brezek 823 F.2d 1014 (7th Cir. 1987)	12
Maryland v. Macon 472 U.S. 463 (1985)	5
Maryland v. Pringle 124 S. Ct. 795 (2003)	5
Mills v. Wainwright 415 F.2d 787 (5th Cir. 1969)	9
People v. Corrigan 473 N.E.2d 140 (Ill. App. Ct. 1985)	12
People v. Rodriguez 53 Cal.App.4th 1250 (Cal. Ct. App. 1997)	12
Perry v. Jones 506 F.2d 778 (5th Cir. 1975)	5
Scott v. United States 436 U.S. 128 (1978)	5
Sheehy v. Town of Plymouth 191 F.3d 15 (1st Cir. 1999)	12
State v. Hollis 633 A.2d 1362 (Vt. 1993)	11

TABLE OF AUTHORITIES (continued)

	Page
State v. Loh 618 N.W.2d 477 (N.D. 2000)	11
State v. Reed 879 P.2d 1000 (Wash. Ct. App. 1994)	4
Thompson v. Keohane 516 U.S. 99 (1995)	6
United States v. Goeltz 513 F.2d 193 (10th Cir. 1975)	5
United States v. Robinson 414 U.S. 218 (1973)	10
United States v. Watson 423 U.S. 411 (1976)	9
Whren v. United States 517 U.S. 806 (1996)	6, 7
Williams v. Schario 93 F.3d 527 (8th Cir. 1996)	12
Wilson v. Layne 526 U.S. 603 (1999)	5
Constitutional Provisions	
United States Constitution Fourth Amendment	i, 6, 7, 9

TABLE OF AUTHORITIES (continued)

	Page
Statutes	
42 United States Code § 1983	2
Cal. Government Code § 26500	4
ALI Model Code of Pre-Arraignment Procedure, § 120.1(2), Commentary at 290-291 (1975)	11
Del. Code Ann. tit. 11 § 1905 (1953)	10
N.H. Rev. Stat. Ann. § 594:13 (1986)	11
R.I. Gen. Laws § 12-7-5 (1981)	11, 12
Wash. Rev. Code § 9A.60.040	3
§ 9A.76.020	3
§ 10.31.100	4

TABLE OF AUTHORITIES (continued)

	Page
Other Authorities	
2 W. LaFave, Criminal Procedure § 3.3(b) (2d ed. 1999)	6
3 W. LaFave, Search and Seizure § 1.4(e) (3d ed. 1996 and Supp. 2004)	10
3 W. LaFave, Search and Seizure § 5.1(e) (3d ed. 1996 and Supp. 2004)	10
4 W. LaFave, Criminal Procedure § 13.1(a) (2d ed. 1999)	4

IN THE SUPREME COURT OF THE UNITED STATES

No. 03-710

GERALD DEVENPECK AND JOI HANER, *Petitioners,*

v.

JEROME ANTHONY ALFORD, *Respondent.*

INTEREST OF AMICI CURIAE

The attorneys general of California and fifteen other states, as well as the Secretary of Justice of the Commonwealth of Puerto Rico, have a compelling interest in the prosecution of crime and the protection of citizenry. Those interests are thwarted when police officers are held civilly liable for lawful arrests. Accordingly, amici urge this Court to reverse the decision of the Ninth Circuit Court of Appeals in *Alford v. Haner*, 333 F.3d 972 (9th Cir. 2003).

SUMMARY OF ARGUMENT

In *Alford*, the Ninth Circuit permitted the mistaken, subjective beliefs of the arresting officers to invalidate an arrest, despite the existence of probable cause to believe the suspect had committed another offense. In denying the officers' claim of qualified immunity, the court set out what it referred to as "the test applied in the Ninth Circuit": "probable cause may still exist for a *closely related* offense, even if that offense was not invoked by the arresting officer, as long as it involves the

same conduct for which the suspect was arrested." *Alford*, 333 F.3d at 976 (original italics). Under this doctrine, if both offenses are not closely related, the officer's mistaken belief -- even if made in good faith and supported by the judgment of a deputy prosecutor, as here -- will expose him to civil suit under 42 U.S.C. § 1983.

No decision of this Court has ever held that an officer's subjective belief can invalidate an arrest despite the presence of probable cause to believe that the suspect committed an unrelated offense. Indeed, such a doctrine is plainly contrary to the recent decisions of this Court, which have steadfastly refused to consider the actual motivations or beliefs of the arresting officer. No degree of relation is required between the offense that motivates the officer to arrest and the offense for which probable cause actually exists. Accordingly, this Court should extinguish the closely related offense doctrine and reverse the Ninth Circuit's finding of liability against the Washington police officers who properly arrested Alford.

ARGUMENT

ALFORD'S ARREST WAS PROPER BECAUSE THE WASHINGTON PATROL OFFICERS HAD PROBABLE CAUSE TO BELIEVE THAT ALFORD HAD CRIMINALLY IMPERSONATED A POLICE OFFICER

When Washington State police officers arrested Alford on the evening of November 22, 1997, they had probable cause to believe that he was guilty of criminally impersonating a police officer, a misdemeanor under Washington law.[1/] Officer Joi Haner had received a report that Alford had activated wig-wag lights on his vehicle when pulling up behind a disabled vehicle on the side of the road, leading the people at the scene to

---

1. Washington law provides, in pertinent part:

> A person is guilty of criminal impersonation in the second degree if the person:
> (a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and
> (b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

Wash. Rev. Code § 9A.60.040.

Petitioners also presented evidence at the district court that probable cause existed to believe that Alford's evasive, if not dishonest, answers regarding the activation of his wig-wag lights constituted criminal obstruction, a misdemeanor. J.A. 107-108, 157; *see* Wash. Rev. Code § 9A.76.020.

conclude that he was a police officer. *Alford*, 333 F.3d at 974-75; J.A. 34, 96, 97. After pulling him over and noting the law enforcement trappings inside his car -- a police scanner, a microphone, a radio broadcasting the dispatches of the local sheriff's office, and a pair of handcuffs -- Officer Haner became concerned that Alford was a "wannabe cop," a conclusion echoed by Sergeant Devenpeck after he arrived. *Alford*, 333 F.3d at 974-75; J.A.10, 34-35. When the officers saw that Alford was secretly tape recording their conversation, they placed him under arrest. *Alford*, 333 F.3d at 975; J.A. 36-37, 40-42.

The objective facts clearly establish probable cause for a reasonable officer to believe that Alford had committed second degree criminal impersonation. Thus, Officer Haner and Sergeant Devenpeck could have arrested Alford on this basis. *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001); Wash. Rev. Code § 10.31.100 [authorizing warrantless arrest for misdemeanors committed in the presence of the officer]. However, the officers arrested Alford for his supposed violation of a Washington statute prohibiting private conversations from being tape recorded.[2/] *Alford*, 333 F.3d at 975; J.A. 36, 42-43.

---

2. After the arrest, the officers issued a notice of infraction to Alford for having unlawful wig-wag lights and wrote in their reports, under a section heading entitled "charges," that Alford had made an unlawful tape recording. J.A. 24, 32, 37-38, 43. However, it cannot be said that Alford was actually charged with making an unlawful tape recording. Like most states, Washington vests prosecutorial power with county or state entities, leaving police officers powerless to charge anything other than minor traffic offenses. *State v. Reed*, 879 P.2d 1000, 1002 (Wash. Ct. App. 1994); *see also, e.g.*, Cal. Gov. Code § 26500; *Hicks v. Board of Supervisors*, 69 Cal.App.3d 228, 241 (Cal. Ct. App. 1977) ["no one may institute criminal proceedings without the concurrence, approval, or authorization of the district attorney"], 4 W. LaFave, Criminal Procedure § 13.1(a) (2d ed. 1999).

It is undisputed that Alford did not violate any law by recording his conversation with the officers. *Alford*, 333 F.3d at 974. The officers' subjective belief regarding the illegality of the tape recording turned out to be wrong. The Ninth Circuit believes that this mistake warrants a monetary civil judgment in Alford's favor.

However, the Ninth Circuit misunderstands this Court's test for probable cause. Alford's arrest should not be invalidated on the basis of the officers' subjective beliefs regarding the scope of a tape recording statute. The proper inquiry, as this Court has made clear, is an objective one: "the objective inquiry [is] whether a reasonable officer *could have believed*" that a crime had occurred. *Wilson v. Layne*, 526 U.S. 603, 615 (1999) [italics added]. The use of the phrase "could have believed" avoids reference to the arresting officer's actual state of mind and instead focuses on the objective presence of facts. Accordingly, the vantage point is that of an objectively reasonable officer, not an actual one, as this Court has made clear: "Whether a Fourth Amendment violation has occurred 'turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time,' . . . and not on the officer's actual state of mind at the time the challenged action was taken." *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985) (*quoting Scott v. United States*, 436 U.S. 128, 136 (1978)); *see also Maryland v. Pringle*, 124 S. Ct. 795, 800 (2003) ["we examine the events leading up to the arrest,

---

In any event, whether or not Alford was eventually charged with any particular offense is of no moment because it has no bearing on the legality of his arrest. *Fletcher v. Town of Clinton*, 196 F.3d 41, 54 (1st Cir. 1999); *Perry v. Jones*, 506 F.2d 778, 780 (5th Cir. 1975); *United States v. Goeltz*, 513 F.2d 193, 197 (10th Cir. 1975). The determination of whether probable cause supports an arrest cannot be altered by subsequent evidentiary developments or discretionary choices by prosecutors.

and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause"]; *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) ["the court must apply an objective test"]. In fact, as a leading commentator in the field of criminal procedure explains, "if the objective probable cause test is met it is not also necessary to establish that the particular officer making the arrest . . . subjectively believed probable cause was present." 2 W. LaFave, Criminal Procedure § 3.3(b) (2d ed. 1999).

This Court has made it clear that an arrest will not be invalidated on the basis of an arresting officer's subjective beliefs or actual motivations so long as there are objective facts amounting to probable cause. For example, in *Whren v. United States*, 517 U.S. 806 (1996), squad officers patrolling a "high drug area" stopped a car after witnessing suspicious behavior by its occupants. *Id.* at 808. When an officer approached the car, he saw two large plastic bags of crack cocaine in the hands of Whren, the passenger. *Id.* at 808-09. At trial, Whren challenged the legality of the stop under the Fourth Amendment. *Id.* at 809-10. Whren claimed that even though the officers had probable cause to stop the car for traffic violations, those reasons were a pretext for the actual, subjective motivation behind the stop -- the investigation of drug activity -- for which the officers lacked probable cause. *Id.* at 810. Whren asked this Court to consider the actual motivation behind the traffic stop and invalidate it if it could be shown to be a pretext. *Id.* at 808, 811.

In a unanimous decision, this Court rejected Whren's argument, explaining that an officer's actual motive cannot invalidate objectively justifiable behavior. *Whren*, 517 U.S. at 812. "Subjective intentions," this Court stated, "play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* at 813. So long as an officer's action is supported by objective

circumstances, the officer's "state of mind" is irrelevant.[3] *Id.* Stated another way, "the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Id.* at 814 (original italics). Accordingly, the stop at issue was validated by the presence of probable cause to support the traffic violations, regardless of the actual motivations of the officers. *Id.* at 819.

To be sure, *Whren* involved a traffic stop, but five years later, in *Arkansas v. Sullivan*, 532 U.S. 769, 771 (2001), this Court forcefully reiterated *Whren*'s holding in the context of an arrest. In a per curiam opinion, this Court reversed the Arkansas Supreme Court's invalidation of an arrest on the basis of an officer's "improper subjective motivation." *Id.* at 772. Again, this Court disapproved any consideration of the arresting officer's "actual motivations" within Fourth Amendment analysis. "The Arkansas Supreme Court's holding . . . cannot be squared with our decision in *Whren*, in which we noted our 'unwilling[ness] to entertain Fourth Amendment challenges based on the actual motivations of individual officers,' and held unanimously that '[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.'" *Id.* at 771-72.

Thus, an officer's subjective belief is immaterial to the determination of probable cause. Indeed, to additionally require

---

3. The *Whren* decision did note that inventory searches and administrative inspections fall outside this rule because both are conducted in the absence of probable cause. *Whren*, 517 U.S. at 811-12. The Court also noted that the selective enforcement of law on the basis of race, for example, would be an exception to this rule, though such a claim would be brought under the Equal Protection Clause, not the Fourth Amendment. *Id.* at 813. None of these exceptions applies to the instant case.

an arresting officer to actually hold a subjective view of certain facts or their legal significance actually creates a two-part standard requiring both an objective and a subjective standard: first, certain facts must objectively exist; and, second, the officer must actually grasp them and their legal significance. Such a two-part test, with both an objective and subjective component, contravenes the standard set forth in this Court's decisions in *Maryland v. Macon*, *Wilson v. Layne*, *Maryland v. Pringle*, and *Thompson v. Keohane*, and it ignores this Court's holdings in *Whren* and *Sullivan*. Under the rules set out in these decisions, the objective existence of probable cause to believe that Alford had committed misdemeanor second-degree criminal impersonation sufficed to validate his arrest; in contrast, the officers' subjective misunderstanding regarding the legality of the tape recording is immaterial. Regardless of the officers' subjective intent, the arrest was reasonable.

Rather than simply asking whether the objective facts of the case supported probable cause, the Ninth Circuit further erred by applying the closely related offense doctrine to the facts of the case, stating that "[p]robable cause may still exist for a *closely related* offense, even if that offense was not invoked by the arresting officer, as long as it involves the *same conduct* for which the suspect was arrested." *Alford*, 333 F.3d at 976 [italics in original]. Noting that an impersonation charge would have been based on conduct unrelated to the mistaken tape recording charge, the court found that the closely related offense standard was not met here. *Id.*

The Ninth Circuit's closely related offense doctrine finds no basis in this Court's jurisprudence. In *Alford*, the Ninth Circuit refers to it as "the test applied in the Ninth Circuit" and cites its own prior decision in support of the doctrine. *Alford*, 333 F.3d at 976, *citing Gasho v. United States*, 39 F.3d 1420, 1428 n.6 (9th Cir. 1994). However, *Gasho*, like other circuit court decisions citing the closely related offense doctrine,

cannot trace the doctrine to any controlling authority from this Court.[4] Indeed, the doctrine is often traced back to the case of *Mills v. Wainwright*, 415 F.2d 787, 789-90 (5th Cir. 1969), where the Fifth Circuit found the police tactic of arresting a suspect on a lesser charge for the purpose of investigating his involvement in an unrelated, more serious offense to be an "evil" means of discovering evidence, a "sham" and a "fraud." *Id.* at 790. The closely related offense doctrine, explained the court, served to prevent such "evil" investigatory tactics by preventing suspects from being arrested on unrelated grounds for investigatory purposes, even if probable cause otherwise existed to justify the suspect's arrest on the unrelated charge. *Id.*

The court's attempt in *Mills v. Wainwright* to use the closely related offense doctrine to discern and evaluate the purpose of an arrest under the Fourth Amendment cannot be reconciled with this Court's decisions in *Whren* or *Sullivan*. The arrest in *Whren* was valid despite the fact that the traffic violations, for which probable cause existed, were in no way related to the drug offenses, for which probable cause was lacking. Likewise, the vehicle code violations in *Sullivan*, for which probable cause existed, were in no way related to the drug offenses, for which probable cause was lacking. Yet the arrest in *Sullivan* was also proper under the Fourth Amendment. In neither decision did the lack of a close relation between the offenses render the arrest invalid.

That the officers in *Whren* and *Sullivan* may have been motivated to further detain the suspects in order to investigate drug activity was immaterial. Rather, in these and similar cases,

---

4. Amici find only a single reference to the doctrine in all of this Court's jurisprudence, and that reference is in a dissent that predates *Whren*. *United States v. Watson*, 423 U.S. 411, 435 (1976) (Marshall, J., dissenting).

this Court has expressly refused to allow the purpose of the detention to invalidate the detention. *See, e.g., United States v. Robinson*, 414 U.S. 218, 221 n.1 (1973) [an arrest will not be rendered invalid by the fact that it was a mere pretext for a narcotics search]; *see also* 3 W. LaFave, Search and Seizure § 1.4(e) (3d ed. 1996 and Supp. 2004). In short, if probable cause exists to arrest a suspect, an investigatory purpose will not invalidate the arrest.

The Ninth Circuit claims that the closely related offense doctrine protects against "later extrapolated justifications" for arrests, something the court suggests occurred in the instant case. *See Alford*, 333 F.3d at 976 ["Since they did not have probable cause to arrest Alford for violating the Privacy Act, defendants now claim on appeal that they had probable cause to arrest Alford for offenses other than tape recording . . ."]. However, it is not exactly clear what is meant by -- or wrong with -- "later extrapolated justifications." If the Ninth Circuit is troubled by the fact that Alford's arrest can be upheld on grounds (i.e., an impersonation charge) other than those that appeared to have actually motivated the officers to take Alford into custody (i.e., the supposedly illegal tape recording), the Ninth Circuit's concerns are unfounded. This Court has explained that a state may seek to justify an arrest by proving the existence of probable cause, even where officers subjectively believed their actions were justified on a different basis. *Florida v. Royer*, 460 U.S. 491, 507 (1983); *see also* 3 W. LaFave, Search and Seizure § 5.1(e) (3d ed. 1996 and Supp. 2004) ["Indeed, arrests are not infrequently upheld on bases other than asserted by police at the suppression hearing."]. If objective facts amount to probable cause, the arrest is proper regardless of the reason cited by the officer.

In fact, several states have statutes that expressly uphold an arrest regardless of the reason cited by the officer. *See, e.g.*, Del. Code Ann. tit. 11, § 1905 (1953) ["If a lawful cause of

arrest exists, the arrest is lawful even though the officer charges the wrong offense or gives a reason that does not justify the arrest"]; N.H. Rev. Stat. Ann. § 594:13 (1986) [same]; R.I. Gen. Laws § 12-7-5 (1981) ["If a lawful cause of arrest exists, the arrest shall be lawful even though the officer made the arrest on an improper ground"]. In other states, courts have reached the same conclusion. *See, e.g., State v. Loh*, 618 N.W.2d 477, 479 (N.D. 2000) [if arrest is properly supported by probable cause for a certain offense, the arrest is not vitiated by the officer's subjective reliance on an offense for which there is no probable cause]; *State v. Hollis*, 633 A.2d 1362, 1365 (Vt. 1993) ["when an officer's arrest is properly supported by probable cause to arrest for a particular offense, neither the officer's subjective reliance on an offense for which there is no probable cause, nor the officer's verbal announcement of the wrong offense, vitiates the arrest"].

In contrast to the closely related offense doctrine, which focuses on the reason cited by the arresting officer, these statutes and cases provide a basis for prosecutors to justify an arrest "by proving the existence of probable cause, even where officers subjectively believed their actions were justified on a different basis." *Royer*, 460 U.S. at 507. Because they correctly determine probable cause based on objective facts rather than the articulations or beliefs of the arresting officer, these statutes and cases conform to the decisions of this Court and find support from distinguished commentators. *See, e.g.*, ALI Model Code of Pre-Arraignment Procedure, § 120.1(2), Commentary at 290-291 (1975) ["An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer is unable to determine the particular crime which may have been committed"]. Indeed, it makes little sense to hold officers liable for citing the wrong reason in support of an arrest when there is no constitutional right to be informed of the reason for arrest in the first place. *Burchett v. Kiefer*, 310 F.3d 937, 947 (6th Cir. 2002); *Jones v. City of Jackson*, 203 F.3d

875, 880 (5th Cir. 2000); *Williams v. Schario*, 93 F.3d 527, 529 (8th Cir. 1996); *Kladis v. Brezek*, 823 F.2d 1014, 1018 (7th Cir. 1987).

However, despite their conformity to this Court's jurisprudence, these state court statutes and decisions do not insulate state police officers from civil liability imposed by federal circuit courts applying the closely related offense doctrine. *Compare, e.g., Hatcher v. State*, 410 N.E.2d 1187, 1189-90 (Ind. 1980) [properly concluding that probable cause is determined from the vantage point of a hypothetical officer and that an officer's actual reason for the arrest is immaterial] and *People v. Corrigan*, 473 N.E.2d 140, 143 (Ill. App. Ct. 1985) ["when an officer makes an arrest which is properly supported by probable cause to arrest for a certain offense neither his subjective reliance on an offense for which there is no probable cause, nor his verbal announcement of the wrong offense vitiates the arrest"] *with Biddle v. Martin*, 992 F.2d 673, 676 (7th Cir. 1993) [applying the closely related offense doctrine]; *compare* R.I. Gen. Laws § 12-7-5 (1981) *with Sheehy v. Town of Plymouth*, 191 F.3d 15, 19-20 (1st Cir. 1999) [applying the closely related offense doctrine]; *compare People v. Rodriguez*, 53 Cal.App.4th 1250, 1266-67 (Cal. Ct. App. 1997) ["the test is not whether a reasonable officer would have made the arrest for the reasons given"] *with Alford*, 333 F.3d at 976. Washington is not alone in its concern that its police officers face unjustified lawsuits. This Court should extinguish the closely related offense doctrine so that state police officers will no longer face civil liability for making lawful arrests.

In this case, the Washington police officers acted reasonably and in good faith. They had probable cause to believe that Alford was guilty of second degree criminal impersonation. The lack of a close relationship between the impersonation offense and the supposed tape recording offense should not invalidate the arrest. This Court should extinguish

the closely related offense doctrine and reverse the decision of the Ninth Circuit.

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court reverse the decision of the Ninth Circuit below.

Dated: June 17, 2004

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

MANUEL M. MEDEIROS
State Solicitor

ROBERT R. ANDERSON
Chief Assistant Attorney General

MARY JO GRAVES
Senior Assistant Attorney General

JANET E. NEELEY
Supervising Deputy Attorney General

LEE E. SEALE
Deputy Attorney General

PATRICK J. WHALEN
Deputy Attorney General
Counsel of Record

Counsel for Amici States

LES:ky